

SEARCH & SEIZURE - PROTECTIVE SWEEP

U.S. v. Archibald

589 F.3d 289 (6th Cir. 2009)

FACTS: Archibald was on probation on April 29, 2006, when Metro Nashville police arrived at his residence to arrest him for violations. Sgt. Fidler had also checked his background and learned that Archibald was a higher risk because of his violent background. They tried knocking with no response, but the officer at the front door indicated that he could hear someone moving around inside and eventually heard a male voice. After some ten minutes, the door was opened and Archibald was pulled out by the officer at the door. Officer Nielson, at the door, was inside the house momentarily and could see some walls and obstructions behind which someone could hide. Sgt. Fidler and another officer entered to do a “short protective sweep.”

While inside, Sgt. Fidler spotted white powder and paraphernalia. No other person was found and no further incriminating evidence spotted. They secured the premises and obtained a search warrant. A firearm was found, triggering an additional charge, since Archibald was a convicted felon.

Archibald moved for suppression, arguing that the officers had no reason to believe there was anyone else in the apartment. When that was denied, Archibald took a conditional guilty plea and appealed.

ISSUE: May officers do a protective sweep when they have no reason to believe anyone else is in the house?

HOLDING: No

DISCUSSION: The Court began by noting that “it is well-settled that arrest warrants are not search warrants.”¹ The Supreme Court had “identified two types of warrantless protective sweeps of a residence that are constitutionally permissible immediately following an arrest.”

The first type allows officers to “look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.”² The second type of sweep goes “beyond” immediately adjoining areas but is confined to “such a protective sweep, aimed at protecting the arresting officers[.]” The first type of sweep requires no probable cause or reasonable suspicion, while the second requires “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” The Supreme Court also “emphasize[d]” that this second kind of sweep is “not a full search of the premises,” but “extend[s] only to a cursory inspection of those spaces where a person may be found” and should last “no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.”

¹ See Steagald v. U.S., 451 U.S. 204 (1981)

² Maryland v. Buie, 494 U.S. 325 (1996)

In this case, the Court noted, the government agreed that the “challenged protective sweep occurred incident to an in-house arrest and involved an area immediately adjoining the place of Archibald’s arrest.” However, it argued the case under the second category, “which requires ‘articulable facts’ supporting the presence of another person who might pose a potential danger to the arresting officers.” It was the government’s burden to argue the case under the proper provision. The Court however, noted that the protective sweep would have failed under that provision as well, as Archibald was taken into custody at the threshold. The officers “did not see any other individuals, weapons, or other contraband when they looked inside the doorway.” Archibald was pulled outside and handcuffed. The sweep did not just encompass the adjoining room but apparently the entire house. The Court noted, “by extending the scope of the protective sweep, the officers ran the risk of exposing themselves to more danger.”

The prosecution tried to argue the justification under the second Buie category with the following:

(1) of defendant’s prior arrests for violent crimes; (2) the “particular vulnerability” of the officers; (3) Archibald’s delay in responding to the knocking and announcement by Nielsen; (4) “noises from inside defendant’s residence”; and (5) Archibald’s arrest and the protective sweep occurred simultaneously.

Taking each in turn, the Court found that Archibald’s “own dangerousness is not relevant” when the officers were thinking about someone else inside the house - Archibald’s prior history was irrelevant.³ Prior cases offered in support of the government’s position involved “strong circumstantial evidence that potentially dangerous criminal accomplices might be present.” The officer’s concern about being in the “fatal funnel” because of their inability to see beyond certain visual obstructions does not change their burden. Further, it noted if “entry in a ‘fatal funnel’ poses a greater risk to law enforcement, the prudent course of action would have been to back away from the door, not proceed through it.” Archibald’s long delay in coming to the door caused the officer at the door to testify about what he heard, but the court focused on language that suggested the officer heard only one person inside. The Court noted that “lack of knowledge as to whether others were in a home necessarily failed the Buie standard” as to do otherwise “creates an incentive for the police to stay ignorant as to whether or not anyone else is inside a home in order to conduct a protective sweep.” Finally, the Court simply dismissed any justification under the fifth provision.

The Court reversed the lower court’s decision and remanded the case.

³ See U.S. v. Colbert, 76 F.3d 773 (6th Cir. 1996).